

United States District Court  
Southern District of California

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
vs. ) Case No. 10-CR-4246 JM  
 ) 10-CR-4645 JM  
BASAALY SAEED MOALIN, ) Thursday, January 20, 2011  
MOHAMAD MOHAMAD MOHAMUD, ) Motion Hearing  
ISSA DOREH, )  
AHMED NASIR TAALIL MOHAMUD, )  
 )  
Defendants. )  
\_\_\_\_\_ )

Before the Honorable Jeffrey T. Miller  
United States District Judge

Official Interpreter: Ahmedei M. Farah, CCI  
Official Court Reporter: Debra M. Henson, CSR, RPR  
U.S. Courthouse  
333 W. Broadway, Suite 420  
San Diego, CA 92101  
(619) 238-4538

Record produced by stenographic reporter

1   Appearances

2   For the Government:       Laura E. Duffy  
3                               UNITED STATES ATTORNEY  
4                               William P. Cole  
5                               Caroline P. Han  
6                               ASSISTANT U.S. ATTORNEYS  
7                               880 Front Street, Suite 6293  
8                               San Diego, CA 92101

9   For the Defendants:  
10   (Mr. Moalin)               Marc B. Geller, Esq.  
11                               LAW OFFICES OF MARC B. GELLER  
12                               1010 Second Avenue, Suite 1820  
13                               San Diego, CA 92101

14   (Mr. M. Mohamud)         Mahir T. Sherif, Esq.  
15                               LAW OFFICES OF MAHIR T. SHERIF  
16                               3376 30th Street  
17                               San Diego, CA 92104

18   (Mr. Doreh)               Kenneth J. Troiano, Esq.  
19                               LAW OFFICE OF KENNETH J. TROIANO  
20                               P.O. Box 33536  
21                               San Diego, CA 92163

22   (Mr. A. Mohamud)         Holly S. Hanover, Esq.  
23                               LAW OFFICES OF HOLLY S. HANOVER  
24                               1016 La Mesa Avenue  
25                               Spring Valley, CA 91977

1           San Diego, California - Thursday, January 20, 2011

2           (Defendants are being assisted by a Somali interpreter.)

3           THE CLERK: Calling matters 2 and 3 on calendar,  
4 matter No. 2, 10-CR-4246, USA versus Basaaly Saeed Moalin.  
5 Counsel, could you please state your appearance.

6           MR. GELLER: Marc Geller, your Honor, on behalf of  
7 Basaaly Moalin. For the record -- good morning, your Honor.  
8 Marc Geller appearing on behalf of Basaaly Moalin. He is  
9 entering the courtroom in custody.

10          THE COURT: Thank you.

11          MR. SHERIF: Good morning, your Honor. Mahir  
12 Sherif on behalf of Mr. Mohamad Mohamad Mohamud. He's in  
13 custody, your Honor, and present.

14          THE COURT: Okay. Thank you.

15          MR. TROIANO: Good morning, your Honor. Kenneth  
16 Troiano on behalf Mr. Doreh. He's not present yet. I do  
17 need a brief moment with him, if I could, before we start.

18          THE COURT: Okay.

19          MS. HANOVER: Good morning, your Honor. Holly  
20 Hanover on behalf of Ahmed Mohamud. He is also present  
21 before the Court in white.

22          MR. GELLER: Also for the record, your Honor, it  
23 doesn't appear that we have an interpreter that's -- or they  
24 have headsets that are working with the interpreter.

25          MR. COLE: Your Honor, William Cole and Caroline

1 Han for the United States.

2 THE COURT: Thank you. We're still missing one.  
3 Whose client is missing at this time?

4 MR. SHERIF: I think we have all four, your Honor.  
5 Oh, we are missing a client.

6 DEPUTY U.S. MARSHAL: There's one in the back, your  
7 Honor. Be out in just a second. They're bringing him out.

8 THE COURT: Okay. Very good. Thank you. Did you  
9 say there's no interpreter?

10 THE CLERK: Yes, there is, your Honor.

11 THE COURT: There is, okay. Very good.

12 MR. SHERIF: Your Honor, is the Court going to  
13 arraign them on the superseding indictment?

14 THE COURT: No -- well, I understand the  
15 superseding indictment has been issued in the case joining  
16 all four gentlemen at this point; is that correct, Mister --

17 MR. COLE: Yes, your Honor. The superseding  
18 indictment was returned. It simply merges the two cases;  
19 there's no new charges, but it does add Mr. Ahmed Nasir  
20 Taalil Mohamud as a fourth defendant in the main case, 4246,  
21 so I suppose these gentlemen would need to be arraigned on  
22 the superseding indictment.

23 MR. SHERIF: If that's the case, I'm going to need  
24 a minute, your Honor, because I haven't gone over the  
25 superseding indictment with my client.

1 MR. GELLER: I haven't --

2 THE COURT: One at a time, please. Mr. Sherif, how  
3 much time would you like?

4 MR. SHERIF: Five, ten minutes, your Honor.

5 THE COURT: All right. I'm certainly prepared to  
6 give you additional time if you'd like. I don't want you in  
7 any way to feel rushed.

8 MR. SHERIF: No, I'm not being rushed, your Honor.

9 THE COURT: Okay. Mr. Geller?

10 MR. GELLER: I don't have a copy of the superseding  
11 indictment.

12 THE COURT: All right. Tell you what. Why don't  
13 we take about ten minutes at this point, all right, so that  
14 Mr. Cole can provide copies of the superseding indictment to  
15 all counsel, counsel can stake a look at the superseding  
16 indictment, Mr. Sherif can confer with his client if he needs  
17 to confer, other counsel may confer with their clients if  
18 they seem that necessary, and then we'll proceed.

19 MR. GELLER: Thank you, your Honor.

20 THE COURT: Very good. Just let us know when  
21 you're ready to proceed, counsel.

22 (There was a break in the proceedings.)

23 THE COURT: Okay. Have all counsel had an  
24 opportunity to review the superseding indictment and review  
25 that with your client if necessary?

1 MR. SHERIF: Yes, your Honor.

2 MS. HANOVER: Yes, your Honor.

3 MR. TROIANO: Yes, your Honor.

4 MR. GELLER: Yes, your Honor.

5 THE COURT: Okay. Very good. Thank you. All  
6 right. Let us proceed with the arraignment then on the  
7 superseding indictment. The superseding indictment I assume  
8 is still going to bear case number 10-CR-4246; is that  
9 correct, Mister --

10 MR. COLE: Yes, your Honor.

11 THE COURT: Very good.

12 THE CLERK: Basaaly Saeed Moalin, is that your true  
13 name?

14 DEFENDANT MOALIN: (In English) Yes.

15 THE CLERK: Mohamad Mohamad Mohamud, is that your  
16 true name?

17 DEFENDANT M. MOHAMUD: (In English) Yes.

18 THE CLERK: Issa Doreh, is that your true name?

19 DEFENDANT DOREH: (In English) Yes, ma'am.

20 THE CLERK: Ahmed Nasir Taalil Mohamud, is that  
21 your true name?

22 DEFENDANT A. MOHAMUD: (In English) Yes.

23 THE CLERK: You are each informed that a  
24 superseding indictment has been filed charging you with  
25 conspiracy to provide material support to terrorists;

1 conspiracy to provide material support to a foreign terrorist  
2 organization; conspiracy to kill in a foreign country;  
3 conspiracy to launder monetary instruments; providing  
4 material support to terrorists. Have you received a copy?

5 MR. GELLER: On behalf of Mr. Moalin, we have, and  
6 we'd waive further reading.

7 MR. SHERIF: On behalf of Mr. Mohamad Mohamad  
8 Mohamud, we have, your Honor, and we waive reading.

9 MR. TROIANO: Yes as to Mr. Doreh as well.

10 MS. HANOVER: As to Mr. Ahmed Mohamud as well, yes.

11 THE COURT: And you waive further reading,  
12 Mr. Troiano?

13 MR. TROIANO: Yes, I do.

14 THE COURT: Ms. Hanover, you waive further reading?

15 MS. HANOVER: Yes, your Honor.

16 THE COURT: All right.

17 THE CLERK: Gentlemen, you are further informed  
18 that you're entitled to a trial by jury or a trial by the  
19 Court; to be represented by counsel at all stages of the  
20 proceedings before the Court; and to have witnesses summoned  
21 to testify in your behalf. How do you now plead to the  
22 superseding indictment?

23 MR. GELLER: With respect to the charge alleged  
24 against Mr. Moalin, we'd ask that not guilty pleas be  
25 entered.

1 THE COURT: A not guilty plea will be entered on  
2 behalf of Mr. Moalin with respect to all counts.

3 MR. SHERIF: Not guilty on behalf of Mr. Mohamud,  
4 your Honor.

5 THE COURT: A not guilty plea will be entered with  
6 respect to Mr. Mohamud as to all counts.

7 MR. TROIANO: Not guilty for Mr. Doreh as to all  
8 counts.

9 THE COURT: A not guilty plea will be entered as to  
10 Mr. Doreh as to all counts.

11 MS. HANOVER: Not guilty as to Ahmed Mohamud as  
12 well, your Honor.

13 THE COURT: All right. Not guilty as to Mr. Ahmed  
14 Mohamud as to all counts will be entered. All right. Thank  
15 you, counsel. All right. Gentlemen, you certainly may be  
16 seated if you wish.

17 Okay. So are you moving at this time then,  
18 Mr. Cole, to have case number 10-CR-4645 dismissed without  
19 prejudice in light of the superseding indictment filed in  
20 4246?

21 MR. COLE: Yes, your Honor.

22 THE COURT: All right. Case 10-CR-4645 JM is  
23 dismissed without prejudice at this time. The --

24 MR. COLE: Your Honor, with respect to that  
25 dismissal --



1 THE COURT: -- motions -- excuse me.

2 MR. COLE: Oh, I'm sorry.

3 THE COURT: The motions that are filed in 4645 are  
4 deemed filed in case 10-CR-4246, the sole remaining case in  
5 this litigation. Mr. Cole?

6 MR. COLE: That was one of the points I was going  
7 to raise, and I just wanted to also make sure that the  
8 protective order that was signed in the dismissed case is --  
9 there's already an identical protective order in the current  
10 case. I just wanted to make sure it's clear on the record  
11 that the fourth defendant is subject to that protective order  
12 as well.

13 THE COURT: Yes, that will be the order. The  
14 fourth defendant is subject to the protective order that was  
15 earlier filed in case 10-CR-4645 as it is now deemed filed in  
16 case 10-CR-4246 with respect to Mr. Ahmed Mohamud, and of  
17 course Holly Hanover is deemed appointed -- is appointed for  
18 Mr. Mohamud in case 10-CR-4246.

19 MR. COLE: The only other matter I can think of in  
20 regards to essentially transferring the new case is the order  
21 of detention that was existing in the old case, I assume  
22 that's transferred to the new case.

23 THE COURT: All motions and all orders --

24 MR. COLE: Okay.

25 THE COURT: -- that were filed or issued in case

1 10-CR-4645 are deemed filed and/or issued in case 10-CR-4246  
2 as it has been indicted in the superseding indictment. Okay.  
3 Can we move to discovery? Let's monitor the case for  
4 discovery at this time. Mr. Cole?

5 MR. COLE: Yes, your Honor. We have provided what  
6 we consider to be the great bulk of discovery in this case.  
7 Today we have also put out for discovery -- counsel will get  
8 it after court today; it's available now -- the disk that we  
9 discussed at the last hearing. What we've done, your, Honor,  
10 is we provided approximately 870 some-odd audio calls to the  
11 defense --

12 THE COURT: May I stop you -- and please excuse me  
13 interrupting counsel -- not just you, Mr. Cole; I'm sure I'll  
14 need to interrupt counsel for the defense a few times. As I  
15 recall, the audio disk that you had had 1200 calls on it; at  
16 least that was my understanding.

17 MR. COLE: That was. That's what I said before. I  
18 was mistaken. There were a lot of duplicates that -- and  
19 when it winnowed out, the number of calls, we've turned over  
20 876. We do anticipate that there may be in the near future  
21 some dozens of additional calls, but we're not going to get  
22 to 1200. It's going to be substantially less than 1200. I'm  
23 thinking at this point -- I'm going to be surprised if we get  
24 over 1,000 calls. I think it will stay right at or under  
25 1,000 audio calls.

1 THE COURT: So then you're envisioning a larger  
2 group of secondary calls that you're going to be providing  
3 than you did last time we were together. Last time we were  
4 together, you indicated the disk had 1200 calls and that  
5 there might be another 10 or 20 calls that would be trickling  
6 in; but now you're saying that secondary group is more than  
7 10 or 20?

8 MR. COLE: Yeah, we think, instead, the first group  
9 is much smaller than we anticipated, the second group's going  
10 to be a little bit bigger. And the reason for that, there  
11 was a miscommunication that was largely my fault with the  
12 agent; we were using different vocabularies talking about  
13 different classes of calls. We've straightened that out.  
14 There's not going to be 1200 calls; there's just not going to  
15 be. There's going to be I think ultimately closer to a  
16 thousand.

17 THE COURT: Okay. How many in the second group,  
18 Mr. Cole?

19 MR. COLE: We are anticipating about 110 to 115.  
20 They're in decreasing -- candidly, in terms of planning  
21 budgets or thinking about this, they're in decreasing  
22 relevance to this case, but in an abundance of caution, we're  
23 making them available. Just so your Honor is aware, we think  
24 that the 876 includes -- you know, really even that was  
25 beyond probably what defense is going to find entirely

1 helpful, but we're providing it. We have provided today --

2 THE COURT: May I stop you there --

3 MR. COLE: Yes.

4 THE COURT: -- because last time we were together,  
5 you indicated that of the 1200 calls you thought were on the  
6 disk, about 120 had been defined as material. Now you seem  
7 to be saying there's a larger group that would be deemed  
8 material.

9 MR. COLE: No, no. What I'm saying is that what we  
10 did was we have given -- we have given them the verbatim --  
11 partial or complete verbatim translations of the calls that  
12 we deemed to be sort of the government's case-in-chief, the  
13 material, most relevant matters, and that's about 120, 126.  
14 We've provided those.

15 We've also today -- defense counsel today will  
16 receive the -- what we discussed last time, which was the  
17 segregated disk, so instead of having to pick through the 800  
18 and some calls to find those 126, they will have a disk today  
19 that is just the audio for those 126 phone calls that match  
20 the verbatim translations they received.

21 Now, what I should have -- what I meant to  
22 represent last time and hope I can make clear now is that  
23 those are what the government deemed most relevant  
24 case-in-chief calls. The others -- the number kind of  
25 spreads out there, and we're simply trying to be generous in

1 terms of Rule 16 in our view of it and in terms of what we  
2 can make available in discovery from the audio intercepts.  
3 As we discussed last time, I'm reluctant to pass my judgment  
4 to the defense as to what they may find relevant, but that's  
5 where it stands right now from the government's standpoint.

6 THE COURT: Okay. Now, you've indicated you have  
7 about 126 intercepts that would be material from the  
8 government's perspective and translated. Didn't you have to  
9 go through all of these intercepts though one by one to  
10 determine whether it fell into the material pile or not?

11 MR. COLE: Yes. The -- is the Court's question if  
12 there's summaries or translations for other calls; is that --

13 THE COURT: Yes, that's where I'm ultimately  
14 getting because if you had -- it seems to me you would have  
15 to have a translation of either the entire intercept that you  
16 deemed nonmaterial -- or a summary of it -- but in English so  
17 that you could understand it.

18 MR. COLE: We do not have verbatim translations for  
19 -- when I say verbatim, I mean line-by-line, complete  
20 verbatim translations of all these other calls. There are  
21 summaries, very -- perhaps similar to a T-3 case, there are,  
22 you know, line sheets or summaries of calls. We are working  
23 now to make these available to the defense, but we do not  
24 have them in a format that we are authorized to release at  
25 this time. And so we anticipate, your Honor, that we will

1 obtain the authority to release summaries, but we -- at this  
2 time we can't commit to that on our own. I hope to be able  
3 to report to defense counsel soon the status of that.

4 THE COURT: How much time would be necessary to  
5 acquire authorization to release the summaries of the  
6 additional calls that have been at least initially deemed  
7 nonmaterial by the government?

8 MR. COLE: We think we'll have an answer within two  
9 or three weeks. Now, I can tell you that after we get the --  
10 assuming we get the affirmative answer, from the records  
11 management standpoint, having them be passed over to us and  
12 having been checked and passed over with any necessary  
13 redactions is a little bit more cumbersome, but we'll know  
14 and be able to tell defense counsel in I think two or three  
15 weeks if we're in fact going to be able to make whatever  
16 summary is available. Some of these summaries are very  
17 brief, but whatever summary we do have we would like to make  
18 available; and I think we'll have an answer to defense  
19 counsel within a few weeks on that.

20 THE COURT: Okay. Let's move on then.

21 MR. COLE: Beyond that, your Honor, we have -- the  
22 remaining discovery in the case that will still be coming is  
23 really what I'd describe typical to any -- just about any  
24 case you'd see in this courtroom. It's going to be -- I'd be  
25 surprised -- it will be, you know, document discovery, and I

1 would be surprised -- reports, witness interviews, et  
2 cetera -- and I'd be surprised if it exceeds one ream of  
3 paper total, probably much less than that. And we are  
4 continually in the case of course reviewing files and making  
5 sure we're complying with discovery. I just don't anticipate  
6 a large volume beyond the audio.

7           We are going to be looking at some seized computer  
8 media to see if there's anything off of that that needs to be  
9 turned over in discovery. We will provide that in electronic  
10 form as soon as we determine that it's either Brady or Rule  
11 16. It's not voluminous either, your Honor. There were  
12 searches of the Shidaal Express, which was, you might  
13 recall --

14           THE COURT: Five or six boxes where the absence of  
15 receipts you felt was --

16           MR. COLE: Those have been made available --

17           THE COURT: Okay.

18           MR. COLE: -- and so -- yeah. So, really, it's  
19 just cleanup discovery that will not be voluminous. I'm not  
20 saying it won't be important if we find something that needs  
21 to be turned over, it won't be -- from a budgeting standpoint  
22 or from a time management standpoint, it's not going to be  
23 voluminous discovery from here on out.

24           THE COURT: When you say they've been made  
25 available, the material from Shidaal Express, are you saying

1 that the original -- the original documentation in boxes have  
2 been made available for inspection by counsel or has  
3 everything been copied off and made available? What --

4 MR. COLE: What we've done is we gave the  
5 electronic records that we -- the electronic spreadsheet or  
6 database we gave over to defense counsel on disk. The paper  
7 receipts we've made available for inspection and for them to  
8 determine whatever, if anything, they want to copy. We don't  
9 intend to copy all the receipts. They're not standard size;  
10 it would be very time-consuming to copy all the receipts for  
11 no particular reason. If defense counsel wants to make  
12 arrangements to bring in a copy service, we'd be more than  
13 happy to make them available for that reason. Or if they  
14 want to flag specific things, we could negotiate from there I  
15 guess the copy issue.

16 THE COURT: Anything else on discovery, Mr. Cole?

17 MR. COLE: I don't think so, your Honor.

18 THE COURT: Okay. Let me ask counsel what their  
19 concerns, if any, are with respect to discovery. Mr. Sherif?

20 MR. SHERIF: Yes, your Honor. Before I start,  
21 perhaps I could ask counsel how many conversations there are  
22 overall because it seems like the number has been reduced  
23 this time. So I just want to know how many they have and how  
24 many are they turning over. I think that's a fair question  
25 to ask them at this stage so we don't --



1 THE COURT: Well, I think it is fair, and I'll  
2 certainly -- you know, you have good working relationship; I  
3 assume you --

4 MR. SHERIF: Yes, we do.

5 THE COURT: -- can confer with Mr. Cole, so let Mr.  
6 Cole -- discuss that with Mr. Cole unless Mr. Cole has a  
7 ready answer at this point to the question.

8 MR. COLE: You know, your Honor, I'd rather discuss  
9 it with him off line just to make sure I don't get it wrong.  
10 I think I know. There are -- I will tell your Honor that  
11 there are a great number more audio intercepts that we are  
12 turning over in this case, that we are -- there are many  
13 audio intercepts that are not pertinent or relevant to this  
14 matter and that we do not intend to turn over, and that is  
15 absolutely true; it's a number that would dwarf the number  
16 that we're turning over. And I can discuss that more with  
17 Mr. Sherif out of court. But Rule 16 of course it refers to  
18 relevant audio recordings, not just audio recordings of a  
19 defendant, and so that's part of why I described it -- the  
20 number we are giving, we feel we've gone even beyond -- just  
21 to make sure there's a buffer there -- beyond Rule 16. We  
22 have gone beyond where we think is strictly relevant even  
23 under Rule 16 and provided hundreds of additional calls on  
24 discovery to make sure we're complying with Rule 16 and  
25 Brady, but --

1 THE COURT: Well, I'm a little unclear now. Does  
2 your -- does your number of 126 intercepts, is that what  
3 you're talking about is going above and beyond or is the  
4 figure of 126 plus some additional number what you've turned  
5 over? In other words -- and where does the 876 fit in?

6 MR. COLE: Right. So let me back up. If we take  
7 the 876 we've turned over, and assuming, as I mentioned  
8 earlier, we get ultimately to a number around a thousand,  
9 just assuming, a rough figure, we have 126 that we as the  
10 government deemed relevant and important enough to go to the  
11 time and expense of getting verbatim translations from  
12 Somali, which is a burdensome process, prepared.

13 THE COURT: And put on a separate disk.

14 MR. COLE: And put on a separate disk for the  
15 defense. We certainly agree that there are other calls that  
16 are relevant -- not important enough to warrant, in our view,  
17 preparing verbatim translations but relevant under Rule 16 or  
18 Brady and have turned those over to the defense. Exactly how  
19 many between 126 and 1,000 a defense attorney would agree  
20 with me as to, you know, where the line is on what's  
21 relevant, I can't give you an exact number; I just know that  
22 the approach we've taken is to go beyond -- I've reviewed the  
23 summaries, and I have attempted to go far beyond ones that I  
24 deem relevant under Rule 16 or Brady, to the tune of hundreds  
25 of calls beyond what I deem relevant but have nevertheless,

1 since we have a summary for them, since we have -- since we  
2 can make them available, we will, and that's what we've done.  
3 But there are many thousands of calls that simply are not  
4 relevant to this matter, that are not -- that we don't intend  
5 to produce.

6 THE COURT: Okay. Mr. Sherif, hopefully that is  
7 information that provides additional assistance and guidance  
8 for you, and I'm sure you'll be able to talk to Mr. Cole  
9 about that. Have you had an opportunity to review what has  
10 been provided to you thus far?

11 MR. SHERIF: Yes, we have, your Honor.

12 THE COURT: All right. Have you reviewed the 126  
13 on the separate disk?

14 MR. SHERIF: Yes, I have.

15 THE COURT: And have you reviewed the other number  
16 of conversations over and above the 126 with marginal  
17 relevance?

18 MR. SHERIF: No, I have not.

19 THE COURT: Okay. I would think counsel would need  
20 to do that just to get the spirit of what's being provided to  
21 see if anything else really does need to be provided, and I'm  
22 confident you can work with Mr. Cole on that and anything  
23 that's reasonably requested would be provided. Okay. Was  
24 there anything else you had, Mr. Sherif?

25 MR. SHERIF: No, your Honor.

1 THE COURT: Okay. Mr. Geller, anything on --

2 MR. GELLER: Yes, your Honor. I would just like  
3 to --

4 THE COURT: -- discovery, on discovery?

5 MR. GELLER: Yes, your Honor.

6 THE CLERK: Okay.

7 MR. GELLER: Well, it's on discovery, and I don't  
8 know if the Court wants me to address budgetary concerns  
9 right --

10 THE COURT: No, I don't. Right now just discovery.  
11 I'm just trying to do this in an orderly way.

12 MR. GELLER: No, thank you, your Honor.

13 THE COURT: Okay. Very good. Mr. Troiano?

14 MR. TROIANO: Yes, your Honor. I had made a  
15 request of my client's statements made before or after his  
16 arrest. I have received his postarrest statement. I know  
17 there are at least three other prearrest statements, and I'm  
18 not sure what the position the government's going to take on  
19 whether they're relevant or discoverable under the Rule 16,  
20 but we would ask that the Court be provided those statements  
21 in camera to review and not have to accept the government's  
22 representations on whether they're relevant because clearly  
23 if they were talking to my client, they're relevant to me.

24 THE COURT: Well, on that issue, Mr. Cole, I think  
25 the last time we were together, you indicated that 302s would

1 be provided, the statements of defendants would be provided,  
2 and other materials as well, and I think you indicated at the  
3 time it would be far down the road. But in terms of -- in  
4 terms of what's being provided to the defense, why -- are you  
5 providing all the statements of defendants?

6 MR. COLE: We -- I anticipate that with the  
7 statements he's talking about, his client's own statements  
8 that were made to law enforcement prior --

9 THE COURT: Yes.

10 MR. COLE: -- that we will be turning those over.  
11 We'll look at those -- Ms. Han and I will look at those in  
12 the next two weeks and likely will turn them all over to Mr.  
13 Troiano. If we don't, we'll make him of aware of the number  
14 we didn't so that we can raise this issue with your Honor and  
15 certainly address it.

16 THE COURT: Right. I would think all statements  
17 made by the defendants in connection with this  
18 investigation -- that is, interviews and statements made to  
19 the authorities -- should be provided to defense counsel.  
20 And if, as you say, there's something that's going over that  
21 you're not providing, then you'll need to at the earliest  
22 possible time provide notice of that to Mr. Troiano and then  
23 submit those materials in camera so that I can --

24 MR. COLE: Yes, your Honor.

25 THE COURT: -- review them and make appropriate

1 orders. Okay.

2 MR. TROIANO: That's all.

3 THE COURT: All right. Ms. Hanover?

4 MS. HANOVER: Yes, your Honor. I did receive an  
5 audio recording of my client's statements after he was  
6 arrested as well. During the discussion there was talk by  
7 agents about a few other money transfer companies that may  
8 have records that have not been around over to defense  
9 counsel yet as well -- I know a Wells Fargo account was  
10 mentioned as well, but I've not seen that yet in discovery,  
11 and I was wondering if the government would be turning those  
12 over anytime soon.

13 THE COURT: Even assuming that they're aware of  
14 them or have them.

15 MS. HANOVER: I'm assuming they're aware because  
16 the agents were discussing them.

17 THE COURT: Okay. All right. Mr. Cole?

18 MR. COLE: Yes. There is a -- we will be turning  
19 over -- some of the additional discovery will be some Wells  
20 Fargo bank account records for a Wells Fargo bank account, so  
21 Ms. Hanover and the other defense counsel will get those.  
22 Again, they're not voluminous. We'll turn those over. And I  
23 don't know what other money transmitting businesses she may  
24 be referring to, but I can discuss that with her off line as  
25 well --

1 THE COURT: Please.

2 MR. COLE: -- and if there are records in our  
3 possession, I'm sure we'll turn those over.

4 THE COURT: Okay. Very good.

5 MS. HANOVER: And additionally I was wondering if  
6 the government would be turning over actual telephone company  
7 records of phone calls being made from the various telephones  
8 that are involved in this.

9 MR. COLE: We will look at the -- yes, there's  
10 subscriber information that will be provided for various  
11 phone numbers as well as toll records; to the extent we have  
12 them available, that could be provided as well. So we will  
13 be looking at that, and that will go over in the ordinary  
14 course for sure, your Honor.

15 THE COURT: Okay. Ms. Hanover, anything further?

16 MS. HANOVER: Off the top of my head, that's what I  
17 had, your Honor. Thank you.

18 THE COURT: Okay. Thank you. All right.

19 MR. SHERIF: Your Honor, I have one more issue with  
20 regards to discovery.

21 THE COURT: Please.

22 MR. SHERIF: Your Honor, the issue is that my  
23 client needs to get ahold of and read the verbatims that have  
24 been provided; however, they're subject to the protective  
25 order, and Nellie Klein at MCC could not assure me that

1 somehow they were not going to get into the hands of others  
2 at MCC. Obviously he doesn't have any kind of reasonable  
3 privacy there, so I was wondering how --

4 THE COURT: Well, that's not really a  
5 discovery-related matter vis-a-vis the government. We can  
6 work on that if necessary; if that's going to be an issue,  
7 then I can work with MCC personnel to address any issue that  
8 you've just raised.

9 MR. SHERIF: Fair enough. Thank you.

10 THE COURT: Yes. Okay. Then moving on next to the  
11 next issue. Mr. Cole, over and above discovery, what -- any  
12 additional issues that you have relative to the protective  
13 order that's been signed? The case is has been declared  
14 complex. Any other matters that need to be addressed at this  
15 time?

16 MR. COLE: No, your Honor, just that -- that one  
17 issue. I know we filed a motion about the Speedy Trial Act  
18 and excluding time until our next -- whenever our next  
19 hearing is going to be. But has your Honor already addressed  
20 that? We had filed that, and I don't think we've had a  
21 hearing on that unless your court handled it on the papers.

22 THE COURT: On the issue of what now? The  
23 protective order's been --

24 MR. COLE: The protective order's all squared away;  
25 there's no issue.



1           THE COURT: You're talking about complexity,  
2 declaration of complexity?

3           MR. COLE: Yeah. We filed a joint motion --

4           THE COURT: I know. Mr. Sherif never filed any  
5 opposition. He was given a -- I assume -- I assume that  
6 the -- I had suggested earlier that counsel enter into a  
7 stipulation setting forth the grounds for a declaration of  
8 complexity or, if there were no agreement on that, then we'd  
9 set the matter for hearing. Counsel was given a date for  
10 filing any opposition. I believe your position is at this  
11 point, Mr. Sherif, you don't oppose a declaration of  
12 complexity.

13           MR. SHERIF: Well, your Honor, my position may  
14 change, but I've talked to counsel and have let him know  
15 that -- I didn't want to shoot in the dark; I wanted to get  
16 the discovery and see after reviewing it if it was in fact  
17 complex or not. I have the discovery now, and given two,  
18 three weeks, I think I can make a determination on that issue  
19 together with my client of course.

20           THE COURT: Okay. I'm happy to rule at any time on  
21 this issue, but if you'd like to have more time such that you  
22 could enter into an agreement, into a stipulation, that would  
23 be even better. So if you're asking for additional time, we  
24 can certainly address that at the next hearing date. I know  
25 you've filed no opposition up to this point.

1 MR. SHERIF: That's correct.

2 THE COURT: All right. We'll just trail that  
3 matter then. Obviously any time that's been -- during which  
4 motions have been filed by any defendant tolls the Speedy  
5 Trial Act, and that will certainly happen until the next  
6 motion hearing because of the pendency of motions.  
7 Anything -- anything further from the government as we  
8 continue to monitor the case, Mr. Cole?

9 MR. COLE: No, thank you, your Honor.

10 THE COURT: Okay. Mr. Sherif, anything further we  
11 need to address at this point?

12 MR. SHERIF: No, your Honor.

13 THE COURT: Mr. Geller?

14 MR. GELLER: Yeah, I want to address concerns I  
15 have based on Mr. Moalin's incarceration at CCA and time  
16 constraints that I've already experienced, problems in regard  
17 to that with review of the discovery. So I don't know if the  
18 Court wants me to address that at this time or not.

19 THE COURT: Let's not address it right now. I  
20 think that might be more appropriately addressed in a request  
21 that you might file, an application you might file as to  
22 exactly what your needs are and how often you need to have  
23 access to Mr. Moalin and what's being provided, and then  
24 perhaps I can work with you on that and involve MCC. I don't  
25 know that the government has any standing to address that

1 issue, Mr. Geller.

2 MR. GELLER: Well, I'm not sure that the government  
3 doesn't because -- I don't know if it was in this case or in  
4 another case where I was led to believe that the government  
5 does have some power to try and move people, and one of the  
6 things -- I know that we're dealing with budgetary  
7 constraints, and I was going to ask the Court for further  
8 time to submit a budget because -- maybe I should address  
9 that at this point because we're talking about discovery that  
10 hasn't yet been disseminated, and we don't know how much more  
11 -- we have a pretty good idea from what was stated here on  
12 the record, but we don't have -- we don't have an idea of  
13 exactly when, although we don't -- I know at this point that  
14 he's saying that he's going to turn over more discovery after  
15 the deadline that's been previously set to submit a budget,  
16 so I'm going to ask for an extension with respect to the  
17 submission of a budget based on the fact that there's a lot  
18 of unknown material.

19 THE COURT: You're joining about three or four  
20 different issues here, aren't you? Aren't you talking about  
21 discovery, you're talking about submission of a budget, which  
22 is something that you're going to be getting into very  
23 shortly with Ms. Rutledge, you're talking about -- you're  
24 talking about placement of your client; you got a lot of  
25 moving parts here. So aside from this issue that you've --

1 let me ask you this: Have you talked to Mr. Cole? I mean to  
2 the extent you think the government has ability to move  
3 people around, have you talked to Mr. Cole?

4 MR. GELLER: I brought it up, and I've also, based  
5 upon the Court's suggestion, spoken with -- I left a message  
6 with Nellie Klein and she's left a message with me and she  
7 said she was working on it, and so I think that that's -- you  
8 know, I don't know if -- maybe we can just ask Mr. Cole if he  
9 has any power over that.

10 THE COURT: Well, have you asked him that when  
11 you've been discussing it?

12 MR. GELLER: We discussed it, and he said he was  
13 going to look into that.

14 THE COURT: Okay. I think he should. I don't want  
15 to take up any court time on this issue, but I think what you  
16 bring up is a salient issue; I mean if you're not getting  
17 access to your client, then that's a -- you know, that's a  
18 circumstance that we need to work on.

19 MR. GELLER: Yeah. And I'm not, so I think --

20 THE COURT: Talk to Mr. Cole. I have some concern  
21 about how limited Mr. Cole's ability to influence BOP on the  
22 placement of these gentlemen might be, but I'm certainly  
23 available to discuss any of these issues informally if we  
24 need to --

25 MR. GELLER: Thank you, your Honor.

1 THE COURT: -- address them and to make sure that  
2 you're having sufficient access to your client.

3 MR. GELLER: Yes. Thank you.

4 THE COURT: All right. Thank you. Mr. Troiano,  
5 anything else?

6 MR. TROIANO: No, your Honor.

7 THE COURT: Okay. Ms. Hanover, anything else?

8 MS. HANOVER: No, your Honor.

9 THE COURT: Okay. I do want to set the next  
10 hearing date so that we can continue to monitor the  
11 voluminous discovery in this case, discuss any further  
12 concerns that anyone might have. I do encourage you in the  
13 meantime, however, obviously to be working on this issue that  
14 you've raised, Mr. Geller, because I think it's important,  
15 and then if circumstances need to be addressed, then they  
16 will be, but I want to give you an opportunity to work with  
17 Mr. Cole and work with Nellie Klein further. Okay.

18 MR. GELLER: Thank you.

19 THE COURT: Okay. Very good. All right. What's  
20 your suggestion -- what's your recommendation as to the  
21 setting of the next hearing date, Mr. Cole?

22 MR. COLE: We're recommending -- I talked to at  
23 least Mr. Troiano and Mr. Geller about this in connection  
24 with the motion concerning the Speedy Trial, and we were  
25 proposing a status hearing in late April or early May.

1 THE COURT: Okay. Mr. Sherif?

2 MR. SHERIF: Your Honor, I think that's too far  
3 away. I think perhaps we should just set like a 60-day  
4 status hearing and see where we are.

5 THE COURT: Okay. Mr. Geller, 60 days?

6 MR. GELLER: Well, I share Mr. Cole's belief, but  
7 I'll submit that.

8 THE COURT: Okay. Mr. Troiano?

9 MR. TROIANO: I agree with what Mr. Cole suggests  
10 from my understanding of the complexity issues that it should  
11 be dealt with on a hearing-by-hearing basis, and I think that  
12 that would give us a bit of time to digest the case and know  
13 where we stand, and then the next hearing after that would  
14 have more meaning to it.

15 THE COURT: Ms. Hanover?

16 MS. HANOVER: Your Honor, that's fine. Any date  
17 the Court sets I'm fine with.

18 THE COURT: Okay. Let me take a look here at the  
19 calendar. We'll set this for a Thursday. We're basically  
20 toward the end of January at this point. We'll set something  
21 for early April. April 7, Thursday, April 7, 9 a.m., your  
22 next status hearing. All motions are continued -- all  
23 pending motions are continued to that date. As a result time  
24 is excludable under the Speedy Trial Act between today and  
25 April 7.

1 I'm going to ask counsel to remain to meet with  
2 Ms. Rutledge, if you would, please. I am fully expecting by  
3 that next hearing date you would have received your response  
4 that you need, Mr. Cole, to release the summaries of the  
5 additional intercepts over and above the 126 that you've  
6 designated as material and have been -- those which have been  
7 translated. And also, furthermore, that if the answer is  
8 yes, you may -- you are authorized to release those  
9 summaries, that they will have been released sufficiently in  
10 advance of the next hearing date of April 9 such that if  
11 there are any issues with respect to those summaries, we can  
12 address those as well. So I do want to make a good bit of  
13 headway with respect to that particular issue. I'm fully  
14 expecting that the Wells Fargo records will have been either  
15 provided or made available by that time. And you've  
16 indicated that the five or six boxes from Shidaal Express  
17 have already been made available, is that correct, for  
18 inspection?

19 MR. COLE: Yes. We let counsel know pretty much  
20 right when the case was indicted they could arrange an  
21 appointment to inspect those at their pleasure.

22 THE COURT: Okay. Very good. Okay. Those are the  
23 areas I think we really need to concentrate on. And feel  
24 free to contact chambers if we need to set up an in camera.  
25 I know you'll have your statements by that time, Mr. Troiano,

1 or the government will have provided any statements to which  
2 you're not privy to me for in camera inspection. But I'm  
3 expecting that the statements of defendants themselves in  
4 connection with this case with the -- any interviews or  
5 statements to authorities will have been provided. But as I  
6 started to say, if anything -- if there's a need to address  
7 any of the matters particularly of the type you mention, Mr.  
8 Geller, don't hesitate to contact chambers after you've  
9 talked to Mr. Cole, and we'll certainly be able to meet on  
10 short notice to address those types of issues.

11 MR. GELLER: Very well, because what I plan to do  
12 is speak with Mr. Cole this morning, and if we don't have  
13 something -- I should point out, and I will, that it's taken  
14 me maybe six phone calls and six weeks to play telephone tag  
15 with Nellie Klein and accomplish nothing, and also I  
16 attempted the same thing with the marshal's service, with the  
17 warden at CCA, and I'm getting nowhere, and I'm getting very  
18 frustrated.

19 THE COURT: Okay. But I would just ask one thing.  
20 If we are going to need to meet in an in camera setting on a  
21 chambers conference a short notice, that before you do that,  
22 that you put something in writing, some kind of an  
23 application where you tell me exactly what your experience  
24 has been, exactly what you feel would be sufficient for your  
25 client's needs so that if I get involved, I know what I'm



1 dealing with, okay?

2 MR. GELLER: Very well. Thank you, your Honor.

3 THE COURT: I can talk to Nellie Klein, and I can  
4 indicate that you feel these are the needs for you and your  
5 client, this is what needs to be done, and it will just  
6 facilitate I think the communication.

7 MR. GELLER: Well, one of the things I think that I  
8 should point out -- and it's very brief -- is that she  
9 indicated to me -- Ms. Klein indicated to me that she needed  
10 to speak with the warden's office to see if their internal  
11 procedures would allow him to be at the MCC inasmuch as  
12 there's a co-defendant that's at the MCC, and I don't know --  
13 I don't believe -- I don't know if the co-defendant is in  
14 special housing or not, and the special housing -- she said  
15 that she felt that he wasn't going -- in need of special  
16 housing but there are rules and regulations -- there's just a  
17 lot of red tape. So I can give the Court a rough idea, but  
18 I'm not sure on paper I'll be able to tell the Court a lot  
19 more about it.

20 THE COURT: Well, all I'm saying is that whatever  
21 requests you have should ultimately be made in the form of an  
22 application; I'd appreciate it being made in writing so that  
23 I know exactly what I'm dealing with, what the issues are so  
24 that they can be properly addressed with Nellie Klein. This  
25 would all be after you've had a chance to talk to Mr. Cole to

1 the extent you feel he may have some ability here to optimize  
2 or, if not optimize, improve your situation with respect to  
3 access.

4 MR. GELLER: Very well. Are we going to on the  
5 record address the budgetary concerns --

6 THE COURT: No.

7 MR. GELLER: -- because one of the things -- I  
8 don't know if the Court would be getting involved in this  
9 either, but I think the Court should, with respect to the  
10 deadline we have to submit the first budget --

11 THE COURT: That's not a concern that needs to be  
12 addressed on the record at this point --

13 MR. GELLER: Very well, your Honor.

14 THE COURT: -- really. I think you'll understand  
15 why. Okay. Very good. Okay then. We will see you next on  
16 April 9 if not -- is it April 9 or April 7? April 7. Thank  
17 you. April 7 at 9 a.m. And if counsel could remain behind  
18 for discussions with Ms. Rutledge. Thank you.

19 (The proceedings were concluded.)  
20  
21  
22  
23  
24  
25

Certificate of Reporter

I hereby certify that I am a duly appointed, qualified, and acting Official Court Reporter for the United States District Court; that the foregoing is a true and correct transcript of the proceedings had in the mentioned cause on the date or dates listed on the title page of the transcript; and that the format used herein complies with the rules and requirements of the United States Judicial Conference.

Dated February 25, 2014 at San Diego, California.

/s/ Debra M. Henson (electronic)  
Debra M. Henson  
Official Court Reporter